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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,740	11/20/2000	Peter Worthington Hamilton	5922R2C3	8924

27752 7590 01/30/2003

THE PROCTER & GAMBLE COMPANY  
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EXAMINER

CHANG, VICTOR S

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/716,740

Applicant(s)

HAMILTON ET AL.

Examiner

Victor S Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 January 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20,38-57,75,80,81 and 86-102 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20,38-57,75,80-81 and 86-102 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Group IV in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### *Specification*

2. The disclosure is objected to because of the following informalities: The cross-reference to related application on page 1 of Specification should be updated.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-20, 38-57, 75, 80-81 and 86-102 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner notes that throughout the claims there are many exactly or practically duplicated claims with slight difference, the Examiner suggests Applicant consolidate these claims to avoid possible confusion in the event that there may be infringement issues.

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For example, some, but by no means all, of the practically duplicated claims are:

Claims 54 and 57 are exact duplicates to each other.

Claims 17 and 20 are exact duplicates to each other.

Claims 2 and 39 are also ~~exact~~ <sup>substantial</sup> duplicates to each other.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-20, 38-57, 75, 80-81 and 86-102 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 7, 9-16 and 24 of U.S. Patent No. 6194062. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons:

For claims 4, 18, 38, 55, 80-81, 86, 93-96, claims 1 and 24 of US '062 shows all the features except an express teaching of the gauge in the range from about 0.0001 to

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0.002 inches. However, it is believed that suitable thickness for a storage wrap is either inherently disclosed or an obvious optimization to one skilled in the art.

For claims 2, 39, claim 2 of US '062 teaches "... wherein said active side is activatable by an externally applied force exerted upon said sheet of material."

For claims 3, 5, 40-42, 87, 97 and 100, claim 3 of US '062 teaches "... wherein said active side is activatable by an externally applied compressive force exerted in a direction substantially normal to said sheet of material."

For claims 6, 8, 43, 45, claim 4 of US '062 teaches "... wherein said active side is activatable by an externally applied tensile force exerted in a direction substantially parallel to said sheet of material."

For claims 7 and 44, it is believed that the tensile force required to activate the active side is either inherently disclosed or an obvious optimization to one skilled in the art.

For claims 9, 46, 88 and 98, see the teachings of claim 5 of US '062.

For claims 10, 47, 89 and 99, see the teachings of claim 7 of US '062.

For claims 11, 48, 75, 81, 90, 91 and 101, see the teachings of claim 9 of US '062.

For claims 12, 49, 92 and 102, see the teachings of claim 10 of US '062.

For claims 13, 50, see the teachings of claims 11 and 12 of US '062.

For claims 14, 51, see the teachings of claim 14 of US '062.

For claims 15, 52, see the teachings of claim 15 of US '062.

For claims 16, 53, see the teachings of claim 16 of US '062.

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For claims 17, 20, 54 and 57, see the teachings of claim 19 of US '062.

For claims 19, 56, see the teachings of claim 13 of US '062.

7. Claims 1-20, 38-57, 75, 80-81 and 86-102 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18, 41-58, 66, 81, 87-88 and 95-111 of copending Application No. 09/715586. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons:

For claims 1-20, 38-57, 75, 80-81 and 86-102, it is noted that claims 1-18, 41-58, 66, 81, 87-88 and 95-111 of copending Application No. 09/715586 shows all the features except an express teaching of the gauge in the range from about 0.0001 to 0.002 inches. However, it is believed that suitable thickness for a storage wrap is either inherently disclosed or an obvious optimization to one skilled in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 703-605-4296. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

VSC  
VSC  
January 23, 2003

DANIEL ZIRKER  
PRIMARY EXAMINER  
GROUP ~~1800~~  
1700

*Daniel Zinker*